

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
DUBLIN DIVISION

FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.

2020 NOV -2 P 3:11

CLERK ~~SO. DIST. OF GA.~~

SHERWIN PERKINS, )  
                        )  
Plaintiff,           )  
                        )  
v.                    ) CV 320-064  
                        )  
PHYSICAL THERAPIST RON PRIMUS;   )  
WARDEN ANTONIO CALDWELL; ALEN   )  
LUNDY; MS. HALL, Director of Nursing;   )  
JACKSON, Unit Manager; JOHNSON;   )  
BRAGG, Chief Counselor; DEPUTY   )  
WARDEN MESSER; MEDICAL   )  
COLLEGE OF GEORGIA; OFFICER   )  
JONES; PA OLIVER; DEPUTY WARDEN   )  
LATISHA FRANKLIN; and ATLANTA   )  
MEDICAL CENTER,        )  
                        )  
Defendants.           )

ORDER

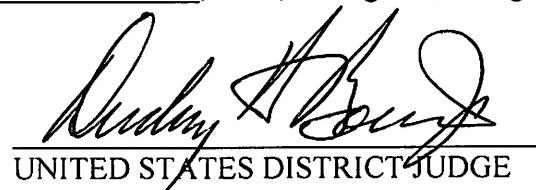
After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation ("R&R"), to which no objections have been filed. In lieu of objections, Plaintiff filed a notice of appeal to the Eleventh Circuit and proceeded to argue he did not intentionally mislead the Court as to his previous filing history and did not intend to seek leave to proceed *in forma pauperis* ("IFP"). (Doc. no. 9.) Plaintiff's appeal to the Eleventh Circuit regarding the Magistrate Judge's R&R recommending dismissal of his complaint without prejudice does not divest this Court of jurisdiction to proceed.<sup>1</sup>

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<sup>1</sup>Although filing a notice of appeal generally deprives a district court of jurisdiction over the issues involved in an appeal, "a notice of appeal filed with respect to a non-appealable order does not have any effect on the district court's jurisdiction." United States v. Riolo, 398 F.

Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **DENIES** Plaintiff's request to proceed IFP, (doc. no. 2), **DISMISSES** this action without prejudice, and **CLOSES** this civil action. If Plaintiff wishes to proceed with the claims raised in this lawsuit, he must initiate a new lawsuit, which would require submission of a new complaint. See Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002).

SO ORDERED this 2nd day of November, 2020, at Augusta, Georgia.

  
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UNITED STATES DISTRICT JUDGE

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App'x 568, 571 (11th Cir. 2010) (*per curiam*) (citing United States v. Hitchmon, 602 F.2d 689, 694 (5th Cir. 1979) (*en banc*)). The Magistrate Judge's R&R recommending dismissal of Plaintiff's complaint without prejudice is not interlocutorily appealable. See Garcia v. JP Morgan Chase, No. 1:11-CV-2149-AT, 2012 WL 13008803, at \*1 (N.D. Ga. Mar. 9, 2012).